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11 IN THE UNITED STATES DISTRICT COURT
12 FOR THE NORTHERN DISTRICT OF CALIFORNIA

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14 **STATE OF CALIFORNIA, STATE OF**
15 **NEW YORK, COMMONWEALTH OF**
16 **PENNSYLVANIA, STATE OF**
17 **CONNECTICUT, STATE OF**
18 **DELAWARE, STATE OF ILLINOIS,**
19 **STATE OF MAINE, STATE OF**
20 **MARYLAND, PEOPLE OF THE STATE**
21 **OF MICHIGAN, STATE OF NEW**
22 **JERSEY, STATE OF NEW MEXICO,**
23 **STATE OF NORTH CAROLINA, STATE**
24 **OF OREGON, STATE OF RHODE**
25 **ISLAND, STATE OF VERMONT, STATE**
26 **OF WASHINGTON, DISTRICT OF**
27 **COLUMBIA, CITY OF NEW YORK, AND**
28 **THE BAY AREA AIR QUALITY**
MANAGEMENT DISTRICT,

Plaintiffs,

v.

25 **UNITED STATES POSTAL SERVICE,**
26 **and LOUIS DEJOY, in his official capacity**
27 **as United States Postmaster General,**

Defendants.

Case No.: 3:22-cv-02583-JD

Case No.: 3:22-cv-02576-JD

PLAINTIFFS' RESPONSE TO
DEFENDANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY

Location: Courtroom 11, 19th Floor
Judge: The Honorable James Donato

Action Filed: April 28, 2022

**CLEANAIRNOW; CENTER FOR
BIOLOGICAL DIVERSITY; and SIERRA
CLUB,**

Plaintiffs,

v.

**LOUIS DEJOY, in his official capacity as
U.S. Postmaster General; and U.S. POSTAL
SERVICE,**

Defendants.

Plaintiffs' Response to Defendants' Notice of Supplemental Authority

On January 19, 2023, the Postal Service submitted a notice of supplemental authority in support of its motion to extend the stay in this case following the recent issuance of a stay in the action in the Southern District of New York. *NGO* ECF No. 61; *State* ECF No. 119; *Natural Resources Defense Council, Inc. v. DeJoy*, No. 1:22-cv-3442. The undersigned plaintiffs jointly submit two points in response.

First, Plaintiffs respectfully disagree with the SDNY order, which is not controlling here, and continue to oppose the Postal Service's motion to extend the stay of the litigation. As noted in Plaintiffs' Response to Notice of Defendants' Recent Public Announcement, *NGO* ECF No. 60; *State* ECF No. 118, the Postal Service has publicly announced a change in its fleet mix for a third time, before even releasing a draft Supplemental Environmental Impact Statement (SEIS). All of these revisions have proceeded before the completion of the new public environmental review process. A stay here would allow these changes to continue before studying the new fleet mix, frustrating the National Environmental Policy Act's intention that an EIS "will not be used to rationalize or justify decisions already made." 40 C.F.R. § 1502.5.

Second, if the Court does issue a stay, Plaintiffs request that the Court impose reasonable conditions on the stay, including an expiration date of August 31, 2023, as the parties and Court discussed at the stay hearing, and status reports every 60 days. Given that the Postal Service itself proposed both the August 31 expiration date, *NGO* ECF No. 57; *State* ECF No. 112; Hrg. Tr. at 14:23-15:1, and the submission of status reports, *State* ECF No. 110, *NGO* ECF No. 55, we encourage the Court to incorporate these conditions into any potential extension of the stay. The safeguard of an end date is crucial to protect Plaintiffs' rights and to provide a fixed time after which litigation may resume. Additionally, the Postal Service represented during the hearing on the stay extension that Oshkosh's ongoing manufacturing activities are not locking in any particular mix of gas-powered and battery electric vehicles; we request status reports to ensure that this remains the case during the pendency of the stay.

1 While Plaintiffs continue to object to the extension of the stay, if the Court does extend it
2 until the publication of the SEIS, we believe both of these reasonable conditions should be
3 imposed on the Postal Service to aid in its accountability and transparency.
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Dated: January 30, 2023

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